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## A SHORT HISTORY OF THE QUESTION OF CONSTANTINOPLE AND THE STRAITS

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# A SHORT HISTORY OF THE QUESTION OF CONSTANTINOPLE AND THE STRAITS

## I

### INTRODUCTION

#### ANCIENT AND MEDIAEVAL PERIODS

|                               |    |
|-------------------------------|----|
| 1. GREEK PERIOD . . . . .     | 9  |
| 2. ROMAN PERIOD . . . . .     | 11 |
| 3. BYZANTINE PERIOD . . . . . | 13 |

## II

### THE TURKISH RÉGIME

|                                                |    |
|------------------------------------------------|----|
| 1. THE CLOSURE OF THE STRAITS . . . . .        | 16 |
| 2. RELATIONS WITH FRANCE . . . . .             | 19 |
| 3. THE CAPITULATIONS . . . . .                 | 21 |
| 4. COMMERCIAL HISTORY UNDER THE TURK . . . . . | 24 |

## III

### THE ARRIVAL OF RUSSIA

|                                     |    |
|-------------------------------------|----|
| 1. PETER I AND CATHERINE II.. . . . | 28 |
| 2. NAPOLEONIC ERA . . . . .         | 34 |
| 3. RUSSIAN TRIUMPHS . . . . .       | 38 |

## IV

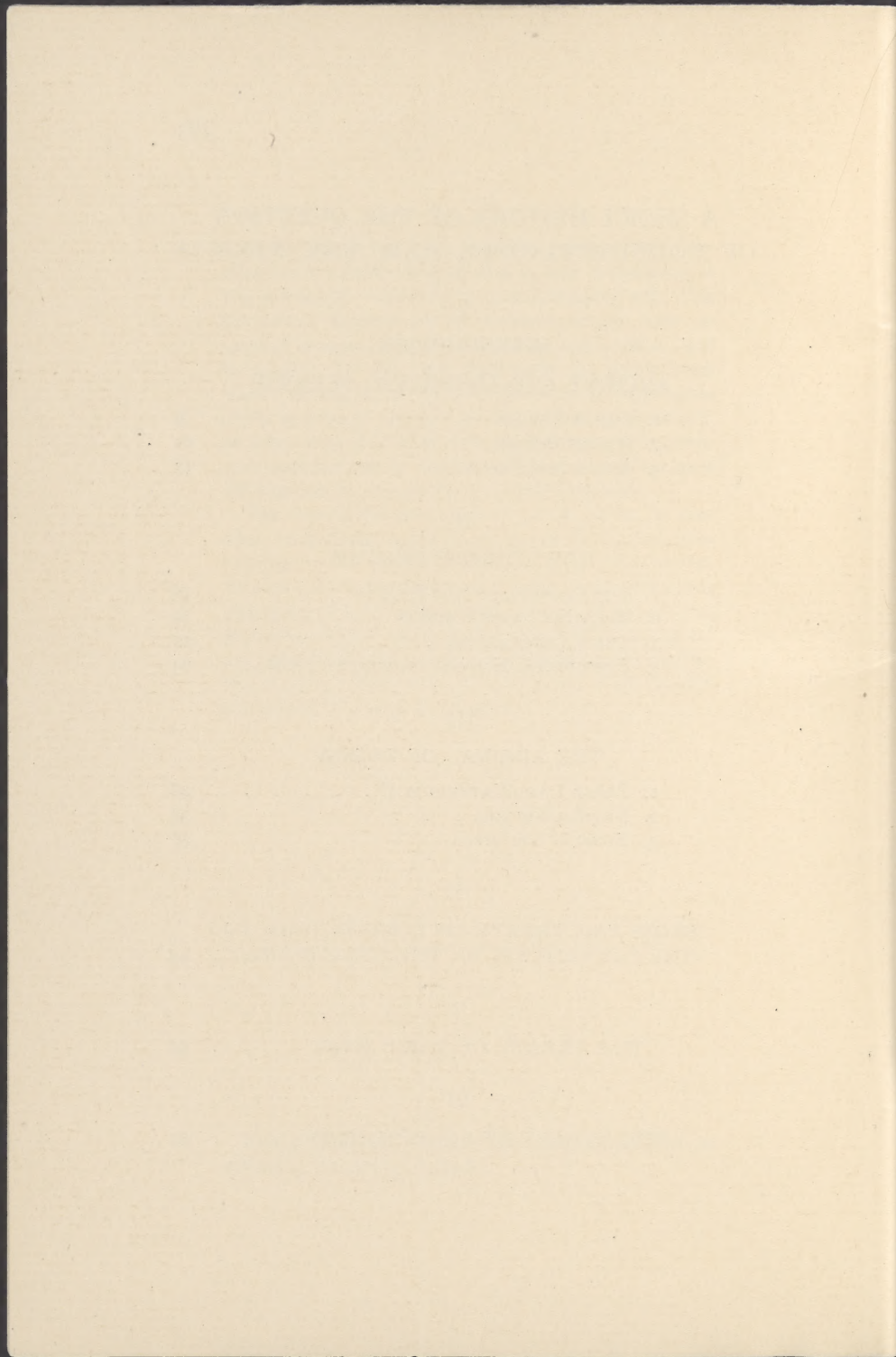
|                                                                                       |    |
|---------------------------------------------------------------------------------------|----|
| FROM THE TREATY OF LONDON (1840) TO<br>THE CONVENTION OF THE STRAITS (1841) . . . . . | 45 |
|---------------------------------------------------------------------------------------|----|

## V

|                                      |    |
|--------------------------------------|----|
| THE TREATY OF PARIS (1856) . . . . . | 52 |
|--------------------------------------|----|

## VI

|                                       |    |
|---------------------------------------|----|
| THE TREATY OF LONDON (1871) . . . . . | 57 |
|---------------------------------------|----|



## PREFACE

" . . . The war has made us all unduly weary of diplomatic tangles. The guns have cannonaded the whole Victorian façade of Austrian, Russian and German diplomacy into political rubble. The Constantinople problem of the seventies is as interesting to us as that which faced the Byzantine Emperors."\* In this striking phrase, the Lord Chancellor of Great Britain recently consigned to academic oblivion a page of history which then seemed—relatively—closed. Meanwhile, other guns have spoken, and the page is once more open. Weary or not, we must turn to it again, for the question with which it deals is not to be got rid of by our ignoring it.

To at least half the world there is no other international problem so important or so pressing for solution as that which centers at Constantinople. Its full significance is hardly apparent from the west; for the interests of European Powers, including Russia, are mainly economic and political; that is to say that they are variable. But in the east, especially the Near East, it embodies an ideal, and a relatively stable one. There the Caliphate has become a symbol of the Oriental protest and revolt against the processes of western expansion—a sort of symbol of Asia. The call of the muezzin at Saint Sophia is heard from Senegal to India.

Unfortunately the conflict of interest and powers which constitutes the Turkish question is not likely

\* From Lord Birkenhead's review of Lady Gwendoline Cecil's *Life of Robert, Marquis of Salisbury*, in *The Times*, November 18, 1921.

to receive the attention it deserves, in spite of the rude and forceful way in which it was last injected into the councils of Europe. For it coincides with another event which temporarily at least seems more significant for European relations, namely the crisis in German finances. The two problems are so unlike that comparisons are unprofitable; but it is probable that the future international adjustments of the world will be more affected by the decisions shortly to be reached about the settlement of Turkey than those which may be reached concerning German reparations. The latter belong in the field of economics and tend therefore to be temporary in their effect. The processes of supply and demand, almost like laws of nature, tend to recover their equilibrium; and even obstacles may spring surprises, in the shape of Discovery and Invention, which accelerate recovery. The problem of Constantinople and the Straits, on the other hand, is primarily not one in economics but in history. It has a continuing interest for all concerned. Behind the narrow straits lies the vast, still potent continent of the Slav, rich in resources and in man power in spite of present conditions. The Danubian countries have a new interest in their outlet by sea since Italy, in the late war, secured and partly blocked the gateway of the Adriatic, which Austria-Hungary had opened as an alternative to the Black Sea route. Mohammedan Asia, with its resources almost untouched but its ancient poise disturbed by western exploitation, watches and waits; and its future history is bound to respond in some degree to the treatment accorded its representative in this issue. And France and Great Britain have already found how deeply the events in the Near

East can drive the wedge of divergent policies which threatens to separate them.

The Lord Chancellor was right, however, in one particular. The present policy of Britain is not based upon historical precedent. The Victorian façade *is* shattered. But sometimes one learns something from ruins; and if there is no desire to restore the old basis of agreement there is surely little in history to suggest that a permanent solution can be made to conform to the vagaries of the present, when Russians and Turks, century-old enemies, are friends for a day. Clearly the matter is one which calls for the application of experience. It cannot be decided without considering what the situation would be like were friends to become opponents and opponents friends. It is also one in which apparent outsiders may ultimately be deeply affected, as the past has shown. In short, solutions narrowly based upon the exigencies of the moment may prove as futile as those resting upon a blind regard for historical precedent. What is necessary—necessary not only for the contestants but for the whole world, including America—is a settlement based upon considerations of the most general application. In no other international settlement is it so obviously in the interest of the contestants themselves that the problem should be thus envisaged. But it is equally obvious, in view of the momentous issues involved, that no great power can avoid a joint responsibility for the character of the settlement. Finally, the enforcement of a settlement affecting all cannot be left in the hands of any one of the late contestants. There must be some instrument of control, if not of administration, embodying the ultimate responsibility for carrying out common

decisions in the interest of all concerned. Anything short of this is not a settlement, as Europe is already beginning to appreciate.

But to return to our history. The following outline of the problem of the Straits is only a narrative of its successive phases down to the Congress of Berlin, reduced to its simplest form. It was written some years ago as a sort of enlarged memorandum for practical purposes. It is hoped that it may prove of service to students of international affairs; but it should be supplemented by other studies dealing with the economic as well as the political interests involved in the present crisis.

PARIS, October 23, 1922.

## I

## INTRODUCTION

## ANCIENT AND MEDIAEVAL PERIODS

## I. GREEK PERIOD

*Prehistory*

The "Question of the Straits" is one of the oldest and most persistent problems in European history. It dates from the dimmest antiquity of Greece: the myths of Jason and the Golden Fleece—which were not all myths. From the very first it showed its twofold aspect, commercial and strategic.

The political issue of the Trojan War, in the thirteenth century B. C., was the control of the Dardanelles. The frail craft from the Mediterranean, working their way slowly against persistent north-east winds and the strong current of the Hellespont (Dardanelles), were easy victims for those who held the stronghold on the southern shore into which they were apt to be forced to turn for supplies. The power of Troy was erected on this strategic-economic fact. Forcing the Greek sailors to halt there, it brought down to its own bazaars the raw materials and produce of the rich Black Sea trade. The remains of many cities before Troy, on the same hill commanding the mouth of the Dardanelles, show that beyond the dawn of history the control of the Straits enabled those pre-Trojan and Trojan predecessors of the Turks to reap rich harvest of market tolls and dues in about the same way the Turks have profited in modern times.

*The Greeks gain the Straits*

Agamemnon, leader of the Greek entente, finally cleared the waters for Aegean ships to reach the source of supplies instead of stopping at the Trojan entrepôt.

This was a larger fact in the development of ancient Greece than the historians appreciated, for history in the antique world paid little attention to economics. But in the period of Greek expansion, when colonies were planted throughout the Mediterranean, an important part of the movement was toward the Black Sea. Of these settlements less is known than of those of the west, on which early Roman civilization was so largely based; but they were a more intimate part of the Greek economy, for apart from the products of the farms of Thrace they tapped the Oriental trade routes in their harbors along the dangerous southern coast of the Black Sea, and they brought grain and gold from the posts along the northern shore.

*Athens at the Straits*

Yet, as Thucydides reminds us, the commerce of the Greeks did not amount to much before the ascendancy of Athens. Their ships were small and frail, merely enlarged row-boats, mostly unprovided with upper decks, and carrying their cargo in the open. Until the battle of Salamis Greek sea-power was insignificant. The Persian army of Darius could cross the Straits and ravage European territory with impunity; and Xerxes could throw his bridge of boats across the Hellespont from Abydos, almost at the very spot where the British garrison in 1922 stood waiting the onset of the Turk from Asia. After Salamis, sea-power as-

serted itself. The ships of Athens grew in size to be the Majestics and the Imperators of that date, and the mistress of the Aegean made it a cardinal point in her policy to hold the Black Sea route both by her fleet and by colonies and dependencies along the Hellespont. At the narrows of the strait she had two colonies, facing each other, Sestos on the Gallipoli peninsula and Abydos at Nagara Point on the Asiatic side. Thus she controlled the trade of the Euxine, which flowed uninterruptedly to Athens until the Athenian empire was destroyed by Sparta in the Peloponnesian War. The story of that long struggle is the subject of the greatest work of antique history; but few readers of Thucydides are led to realize that the crowning blow which ended Athenian supremacy was that final sea-fight on the Hellespont itself, when the Spartan fleet won the day at Aegospotami. When the grain trade was cut off, there was nothing left for Athens but surrender.

## 2. ROMAN PERIOD

### *No "Question of the Straits"*

The control of the Straits was clearly a vital matter for the sea-going Greeks, centered in the Aegean. The interest of Rome in Mediterranean trade lay rather in the south and east, in Egypt and Syria. It collected its toll on the Black Sea trade at Abydos on the Dardanelles; but it was also in control of other more important routes to the Orient. The fundamental point, however, was that, by the time it had reached the Euxine, it had no rivals to exclude. After sea-going Carthage had been destroyed and Pompey had swept the eastern Mediterranean of those free-

booting traders whom the Romans viewed as pirates, the maritime as well as the land empire of Rome was universal. For many reasons, too, the gate to the Oriental trade lay through Egypt and Syria rather than by the Black Sea; while the grain of Africa and other more readily accessible parts of the Empire reduced proportionately the importance of that element so vital to Athens. It is therefore evident that there could be no "Question of the Straits" under the Roman Empire.

### *The founding of Constantinople*

A new era began, however, with the division of the Empire at the close of the third century A. D. The capital which Diocletian chose for the eastern world was Nicomedia, now Ismid, on the south-eastern gulf of the Sea of Marmora. Already the center of gravity was shifting to the Straits when Constantine the Great in 330 chose the site of old Byzantium for his new capital. The reasons for the founding of Constantinople were primarily political and strategic rather than commercial, since it lay like a fortress at the ferry on the land route between Asia and Europe. In Constantine's day it was these land routes, and not the sea-ways, which held the Roman world together. The naval engineers had no such triumphs to record as those who built the Roman roads. But in the succeeding years, when the barbarians broke through the outlying defences on the frontiers and cut the line of march from east to west, it was the maritime strategic value of the city that held so well the key to the eastern seas, which kept the name of Rome a symbol of empire in the East until 1453. For Constantinople, planted as a fortress and a political capital, became a

port and a commercial city—the only great port which kept alive the traditions of antique culture during the dark ages. This rôle it owed in part to the strength of its walls, which time and again defied the invader, but also to its fleet, which was able to control the Straits much more successfully than its armies the surrounding provinces.

### 3. BYZANTINE PERIOD

#### *Constantinople's unique history*

The rise of Mohammedanism in the seventh century, cutting off western Asia from Europe, did not destroy the advantages which its unique position gave to Constantinople. On the contrary, it tended rather to accentuate those advantages. For while the fleet and its engineers were able to foil the Saracens in 673–677 and again in 718, the fall of its rivals, Antioch and Alexandria, gave the Black Sea route once more something of the significance which it had held for the Greeks of the Aegean. The city itself developed that mixture of Greek, Roman and Oriental culture known as Byzantine, and, even under degenerate rule, was able to draw sufficient vitality from its commerce to rival the splendor of the lords of Asia. Its strategic position was such that it did not fall to the Turk until long after he had swept beyond it and held Europe to the Danube.

#### *The rise of Italian cities*

It was not the Moslem, however, but the trading cities of Italy who forced upon Byzantium the "Question of the Straits" in its mediaeval form. In the eleventh century these cities, especially Pisa, Genoa

and Venice, won their way across the Mediterranean by defeating the Mohammedan corsairs, and began their career of commerce. Reaching Constantinople, they sought for their merchants' privileges, as foreigners, of marketing and of free passage beyond to the ports of the Black Sea. But each city sought it solely for itself. There was no idea of an "open door" in mediaeval commercial theory. And commercial exclusiveness in foreign markets was reflected in political history at home; in constant war and mutual destruction.

*Rivalry of Pisa, Genoa and Venice*

The chief rivals at Constantinople, the Pisans, Genoese and Venetians, were constantly at war. The great stroke of Venice was to turn the fourth crusade against the Greek Empire itself, and hold the city from 1204 to 1261, from which time it assumed an overlordship of the Black Sea, forcing both Pisa and Genoa to accept its terms. But the Genoese had their revenge when they helped the Greeks to recover their capital, and received as reward, in addition to the confirmation of their commercial privileges, an exclusive control of the Black Sea trade. All enemies of Genoa—meaning mainly Venice—were to be denied the ports or markets of the Empire. As a result, Genoa pushed its trade on the Euxine and its colonies—of which Caffa, emporium of slaves (Slavs) and Oriental produce, was the most important—and formed a sort of colonial dominion on the northern and eastern shores.

*No concert of mediaeval states*

The details of the Byzantine period lie outside the scope of this history, but it is interesting to note that

through it all the conflicts which these policies of commercial exclusiveness engendered spread back to Europe and led to long disorders. The development of Italy, and, with it, of Europe as a whole, was retarded for centuries by the struggle of the jealous states of the Mediterranean to seize, each for itself, the monopoly of markets and the control of seas which, had they been open, would have brought prosperity to all.

The question of the Straits was obviously a European question from the beginning of European states.

## II

## THE TURKISH RÉGIME

## I. THE CLOSURE OF THE STRAITS

*The Turks at the Dardanelles*

The conquest of the Straits by the Ottoman Turks was a gradual one, extending over a century. Their predecessors in Asia Minor, the Seljuk Turks, whose rise in the eleventh century was one of the chief causes of the Crusades, had suffered both from civil war and from the Mongol invasion so that the Greeks in Byzantium were able to maintain even their feeble hold on the Asiatic shore. But in the closing years of the thirteenth century the chieftain of a new band of war refugees from central Asia, Osman I—whence the name Osmanli or Ottoman—carved out for himself a new sultanate, the foundations of which were laid by defeating the Greeks of Byzantium, so that he could reach to the Sea of Marmora. His son Orkhan, after the conquest of practically the entire southern coast of the sea and straits, profiting from Greek dissension and treachery, sent an expedition across into Europe about 1350, under his son, Suleiman. Finding the country open to him, Suleiman finally crossed the Dardanelles and seized and fortified Gallipoli in 1356. From that time, with but slight intervals, the Ottoman Turks have held the fortifications on both sides of the Dardanelles, which at this point are only about a mile in width. Meanwhile they proceeded with the conquest of the hinterland, overrunning Thrace and establishing their capital in Adrianople in 1367.

*The Turks grant freedom of the Dardanelles*

For almost a century after the Turks had taken the ports on the Dardanelles, Constantinople still held its own against the apparently inevitable fate. The explanation of this anomaly is not to be found in any heroic mood or religious fervor of crusade upon the part of the Greeks, but rather in the general international situation which the passage of the Dardanelles by the Turks had brought about. For the Italian traders were now genuinely concerned with Turkish policy, as they had formerly been—and still continued to be—with Byzantine. So Genoa by diplomacy (1387), and Venice by war (1416), won from the Turks the concession of a free Dardanelles. It was a precarious freedom, but so long as sea-power remained to the Genoese and Venetian fleets, the possession of the land fortifications was not enough to secure the control of the passage. That had to await the invention of heavy artillery.

*The Turks gain control of the Bosphorus*

It was not at the Dardanelles but at the Bosphorus that the Turks finally established their control of the Straits. It should be recalled that the closure of the former presents an entirely different problem from the closure of the latter. The Dardanelles could be opened to Christian shipping, by special grants to European states, in order to reach Constantinople. But the Bosphorus holds the key to the Black Sea. Turkish control of it was a first step in the taking of Constantinople. The year before the capture of that city the Turks built a fort of great strength on the European side of the Bosphorus, opposite the one which had long stood on the Asiatic side just at the narrowest

point—about a mile wide—where the current is strong and navigation most difficult. And in this tower of Roumili Hissar, whose picturesque and massive ruins still guard the Straits, Mahomet II planted heavy cannon, at last made available through the services of a Hungarian founder, and forbade any vessel to pass without express permission. Constantinople, cut off from the east and practically shut off from the west, soon yielded to the assaults of a sultan who was also an engineer. The control of the Bosphorus by the cannon of Roumili Hissar became permanent.

*The Black Sea not closed until all its shores were conquered*

The Genoese at Galata were at first granted privileges by the Turks similar to those they had enjoyed under the Greeks, and for a while they were allowed to pass the Turkish Bosphorus forts upon payment of a toll, but ships attempting to pass without halting were fired upon and sunk if they refused to stop. The Black Sea trade was thus brought to the verge of ruin. So long, however, as the Turks did not control the shores of the Black Sea as well as the Straits, they did not exclude all Christian shipping from the Straits. That control was not established until 1475, when, having already overrun the southern, western and eastern shores, the Turks took Azof and Crimea, reducing the Tartars to accepting their rule and ending the career of the old Genoese colony at Caffa. This made the Black Sea a Turkish lake, and, for the next three centuries, until the arrival of Russia in 1774, it was the settled policy of the Ottoman Empire to exclude all foreign ships from the "virgin waters" of the Euxine through the closure of the Bosphorus.

## 2. RELATIONS WITH FRANCE

*The Turkish Empire at its height*

The rise of the Ottoman Empire in the fifteenth and sixteenth centuries is one of the major events of history, the significance of which is yet not fully appreciated by those who supply the school histories for western European or American readers. The period which seems to the average student to be fully given up to Renaissance, Reformation and religious wars was also the period of the advent of an empire which was perhaps the greatest the world has seen since Roman, or at least since Saracen, days. Just when Martin Luther was launching his revolt Selim I (1512-1526) extended his empire by conquest over the Persians and the whole of Kurdistan, Syria and Egypt. Master of the sacred cities of Islam, he forced the last of the Abbasid caliphs to surrender to him and his successors the title of caliph and the outer symbols of that sacred office, the holy standard, the mantle of the Prophet, and—not least—his sword. His son, Suleiman, or "Solomon the Magnificent," with the heritage of Asia at his command, sent his hosts into the Danube Valley. In 1521 he captured Belgrade and in 1526, at the Battle of Mohács, defeated the Hungarian King Louis II, who perished with the flower of his chivalry. A creature of the Sultan was enthroned at Budapest, whose rocky escarpment by the Danube still bears the marks and memories of the Turk. Vienna was next besieged, but without success (1529), and Suleiman's advance to world-empire was stayed. Even as it was, he reached and ravaged Styria and Carniola, almost at the gate of central Europe. At the same time his corsair admiral,

Khair-ed-din—known to the Christians as Barbarossa—established his power in Northern Africa and spread terror in the Mediterranean.

*The policy of Francis I*

By a strange turn in events the best friend of Suleiman in Europe was the one who, by age-long traditional policy, should have led in the coalition against him. Francis I, however, beaten to his knees by Charles V, was in no mood for a joint crusade upon his rival's other enemy. Much had changed since the days of St. Louis. But even yet the historian must be cynical who is not shocked to find that it was emissaries of the King of France who were sent to stir up Suleiman to march upon the Hungarians on the fatal field of Mohács.<sup>1</sup> Francis chose, however, to follow this policy through; and finally, in 1536, the Caliph and the "Most Christian King" made a treaty which laid a basis for French supremacy in the Levant.

The exact substance of this treaty and its bearing upon the question of the Straits is discussed in the following section. But before turning to it we should recall the economic as well as the political importance of this new policy to France, that of friendly *rapprochement* with the Turks. The consolidation of the Asiatic Empire of Selim and the conquest of Egypt had at last brought the entire Oriental and East Indian trade into the monopolistic hands of Turkey. The conquest of Constantinople in 1453, while it must have injured this trade with the west, did not do so effectively, for the other ports were still open, especially Alexandria. The greatest splendor of Venice, indeed, is in the half-century following the taking of

<sup>1</sup> Cf. Lavissee, *Histoire de France*, II, p. 50.

Constantinople. It was able to tap the other routes, and generally remained on sufficiently fair terms to bargain with the Turks. It was this advantage which France now prepared to share. But another event had already robbed the Levant of its unique commercial value for Europe. For in 1499, Vasco da Gama had found the sea-route to India and the flow of trade was diverted from Cairo to Lisbon, sufficiently at least, to ruin Venice. Thus, while Spain and Portugal and later Holland and England turned to the rich profits of sea-borne trade, France reaped no such harvest from the agreement with the Turk as would have fallen to her had the world remained mediaeval and limited to Mediterranean channels for its outlet to the east.

It would carry us too far afield to follow these suggestions further, however, and we must return to the narrower problem of the effects of this new turn in events upon the trade of the Straits and the Black Sea.

### 3. THE CAPITULATIONS

#### *The French Capitulation of 1535*

The treaty of Francis I with the Sultan is the starting point for the study of Turkish international relations with the states of western Europe. In addition to grants of religious and political privileges under French consuls—to which are to be traced the French claims to protect Christians in Turkey—foreign (i. e. European) ships entering Turkish ports were to sail under the French flag, unless they acquired similar grants.

This kind of a concession, granting extraterritorial jurisdiction to consuls and conceding such special

privileges as the sultan felt obliged or impelled to offer, is known as a "capitulation," a term which, unfortunately, is misleading in its ambiguity. It is derived not from any idea of surrender of rights, but from the low Latin *caput*, *capitulum*, "chapter," referring to the sections and articles into which it is divided. The principle of the capitulations was the old one—taken over from antique Mediterranean and Byzantine jurisprudence—that the sovereignty of a state applied only to its subjects. The capitulations granted by the early sultans were not permanent, lasting only, according to Turkish theory, during the life-time of the sultan granting them. Consequently they were continually modified when reaffirmed and subject to abrogation as being only in the nature of a truce with the infidel. The reaffirmations of the capitulations, however, lent more of a continuity to the régime of the capitulations than might at first appear. For instance, the capitulation of Francis I in 1535 drew largely from the concession granted the French in Egypt in 1528, after its capture by the Turks, and this, in turn, is partly traceable to the treaty made by the Sultan of Egypt with St. Louis in 1251. Finally, the great French capitulation of 1740 was made permanently binding; and on it rest all claims of the French and (by extension) of the other foreigners in Turkey up to 1914.<sup>2</sup>

*All Europe had similar capitulations*

The French capitulation of 1535 became something of a model to be copied in subsequent treaties with

<sup>2</sup> Cf. Pelissie du Raussas, *Le régime des capitulations dans l'Empire Ottoman*. The best collection is that in G. Noradounghian's *Recueil d'actes internationaux de l'Empire Ottoman* (4 vols. 1897-1903). There is an English translation of important treaties, 1535-1878, in a Parliamentary paper (C. 1953) in vol. LXXXIII of 1878.

other European states. The first capitulation with England was arranged in 1579. Those with the Netherlands followed in 1598 and in 1612. The first capitulation with the German (Holy Roman or Habsburg) Empire was the treaty of 1718, though its merchants had been given conditional privileges in 1616. By the close of the eighteenth century all the Christian countries of Europe, except Switzerland and the States of the Church, had gained recognition for the rights of their citizens engaged in business with Ottoman territories.

It is unnecessary here, however, to enumerate the series of capitulations. For *none of these treaties with western European states granted freedom of navigation in the Black Sea*. The Dardanelles were opened, permitting the ships of the nations to reach Constantinople, upon complying with Turkish formalities at Gallipoli and in port. So in the very first capitulation, that of 1535, we read: "Any ship of the subjects of the king . . . shall be allowed to go where it pleases; and, coming to Constantinople, when it is ready to leave, having taken and paid the *hendjet* (cost of making out the papers) and the *emine* (export tax) and having been searched and visited by the *emin*, is not to be visited in any place, except it be at the castle of the Strait of Gallipoli, without paying more there, or anywhere else, for the right to leave." But the Bosphorus remained closed. At first reading, the text of some capitulations is not clear on this point. The grants of freedom of trade are made in general terms and the Black Sea is not specifically excepted. But the presumption was that it was not included.

An exception was apparently made of Venice for a while, until the Turks were in a position to deal with

the first maritime power of the age. Thus (to quote the summary by Young), "by special clauses in the treaties of 1454 and 1479 and by the Capitulations of 1482 and 1513, the Turks granted the Venetians the privilege of trading in the Black Sea, prior to the creation of an Ottoman marine. But this régime always had a provisional character, and with the decline of Venetian shipping and the development of that of the Ottoman Empire, it was replaced by an absolute closure of the Euxine to foreign ships."<sup>3</sup>

#### 4. COMMERCIAL HISTORY UNDER THE TURK

##### *Apparent grants of privileges*

The commercial history of the Black Sea for the next century is quite obscure. Somehow or other adventurous merchants of Europe found their way to the forbidden shores, apparently chartering Turkish shipping, if not, indeed, finding a way to evade the restrictions which sought to make of the Euxine commerce a Turkish monopoly. These conditions are reflected somewhat dimly in treaties with the English and the Dutch in the seventeenth century.

The English secured a rather obscurely phrased concession in the treaty with the Turks of 1606,<sup>4</sup> which was repeated in the general Capitulation of 1675. It reads as follows: "English merchants and anyone else sailing under the English flag can buy and sell without restriction all kinds of merchandise . . . and transport them by land and sea, and also by the Don to Muscovy or Russia, and carry them into

<sup>3</sup> Young, *Corps de Droit Ottoman*, III, p. 66, note.

<sup>4</sup> There is some uncertainty as to the exact date. Hammer gives it as 1604.

our sacred dominions for trade and also take them to Persia and other conquered provinces." The phrase "sailing under the English flag" may be merely a general description and not apply to the use of the flag on the Black Sea. As for that, the following clause (38) of the same treaty indicates that the ships used by these English traders in the Black Sea were Turkish ships chartered by the English. "If the vessels chartered for Constantinople are forced by contrary winds to stop at Caffa (in the Crimea) or some other port in the same region . . ." they are to be safe from local extortion, etc.; hence the inference that in clause 36 the reference was to English merchants in Turkish ships.<sup>5</sup>

The grant to the Dutch seems less easy to explain away. Clause 57 of the treaty of 1689 reads: "If a contrary wind should drive their vessels, destined for Constantinople, to Caffa or any other place on that shore, or if they land voluntarily, they shall not be obliged to unload goods which they do not wish to sell, in order to take them by force. No one shall oppose the passage of their vessels or shipping in these waters."<sup>6</sup> No mention occurs here of the chartering of Turkish ships, and, if such documents could be taken at face value, they would seem to indicate that the Dutch, if not also the English, had obtained the right to penetrate the Bosphorus. *But Turkish monopoly was maintained in the Black Sea.*

The historic fact, however, runs counter to such interpretation. Historians agree in insisting that the exclusion of all foreign shipping from the Black Sea was enforced by the Turk. Even when Austria (i. e.

<sup>5</sup> Cf. Mischef, *La Mer Noire et les détroits de Constantinople*, p. 30.

<sup>6</sup> Noradounghian, *op. cit.* I, p. 181.

the Habsburg monarchy) forced upon Turkey the crushing peace of Passarowitz (1718), the ancient rule that only Turkish ships should sail the Turkish waters was not surrendered. Merchants of the Holy Roman (or Habsburg) Empire might charter boats at Danube ports and send their goods over the Black Sea, but the boats themselves were to be Turkish.

. . . "As it has been agreed that the imperial shipping of the Danube will not enter into the Black Sea, they will go by the said river to Ibrail, Isaktche, Kilia and other ports, where are found open boats (caiques) and ships suitable for the navigation of the Black Sea. They will there unload their goods, place them on the (Turkish) ships which they will charter for that object, and they will have full and entire liberty to transport them to Constantinople, the Crimea, Trebizond, and Sinope and the other ports of the Black Sea where their goods find a market."

Twenty years later, in the Treaty of Belgrade (1739), the privileges of "merchants of the provinces under the Emperor of the Romans," to trade in and through the Ottoman Empire were restated on the same general terms as in the capitulations granted the French, English and Dutch.

As a counterpart to the history of the Holy Roman Empire that of France during this period is also instructive. Although it was largely owing to French services that the Treaty of Belgrade (1739) restored Serbia to Turkey, nevertheless, in the capitulations which France secured as a reward (1740), and which were to become the lasting basis of French claims in

the Levant, the French flag was still excluded from the Black Sea.

It was not until Russia finally established itself on the northern shores at the end of the eighteenth century, that Turkey was obliged formally to surrender its policy of exclusion of foreign shipping from the Black Sea. The Bosphorus was forced open from the east instead of the west.

## III

## THE ARRIVAL OF RUSSIA

## I. PETER I AND CATHERINE II

During the seventeenth century, Turkey held its own as one of the Great Powers—perhaps the most powerful, with the doubtful exception of France. At the end of that century, however, it began that process of decline which has slowly continued until the present. Attacked along the whole of its northern front, it was obliged to surrender most of the Danube Valley (Hungary and Transylvania) to the Habsburgs, the Ukraine and Podolia to Poland and Azof to Russia. The Treaty of Carlowitz in 1699, in which these losses of Turkey were registered, marks the first distinct step in the dismemberment of the Ottoman Empire.

*Peter I*

The Turkish monopoly of the Black Sea was now about to be threatened by two Powers, Austria and Russia. Of these, however, Russia alone had reached the shores and set out at once to overcome the Turkish claims.

In 1700, Peter the Great, with characteristic energy and aggressiveness, sent an embassy to Constantinople, on board a Russian man-of-war, one of the Russian squadron he had built in the taking of Azof. This first Russian battle-ship made an impression at Constantinople; but the Turk was not to be overawed by it, nor by the aggressive attitude of the

Russian envoy, and the demand for freedom of navigation on the Black Sea for Russian ships was emphatically refused. The Turkish Government asserted that no foreign vessel should ever sail "the virgin waters of the Black Sea," and, in the face of the intruder, recalled that this rule had been religiously observed in the past. The negotiations failed; the Turks still maintained that Russian ships should not sail out of the Sea of Azof, and that Russian goods destined for Constantinople should cross the Black Sea in Turkish bottoms.<sup>7</sup> Peter's diplomatic failure was followed by his military defeat in a renewal of the war and ten years later (1710) he was forced to surrender his former conquest on the Black Sea, by the Treaty of Pruth, 1711.<sup>8</sup>

*First step toward the neutralisation of the Black Sea*

A further barrier against the on-coming Russian was erected by Turkey, seconded by France, in the Treaty of Belgrade, 1739. This provided for the destruction of the Russian forts of Azof and forbade Russia to maintain or construct a fleet or other ships in the Sea of Azof or in the Black Sea,<sup>9</sup> and it repeated the rule that all Russian commerce on the Black Sea should be in Turkish ships.<sup>10</sup> This attempt at Russian disarmament, significant in the light of later history, was naturally resented by Russia in

<sup>7</sup> Mischef, *op. cit.*, Chapter I. Goriainow, *Le Bosphore et les Dardanelles*, p. 2. The same principle was applied to Austria, by the Treaty of Passarowitz, 1718. See above.

<sup>8</sup> Articles 1 and 2.

<sup>9</sup> Article III, Noradounghian, I, p. 260.

<sup>10</sup> Article II, *Ibid.* p. 262. France objected to free navigation on the Black Sea, fearing a rival in the Mediterranean, and stimulated Turkish opposition. Cf. Beer, *Orientalische Politik Oesterreichs*, p. 17.

proportion as its economic and military development carried it to the shores of the Black Sea.

### *Catherine II*

It was left for Catherine II finally to conquer the Black Sea coastlands for Russia. Although her ambition to divide up Turkey, as well as Poland, was not realized, she forced the Sultan to surrender his control of the north shore of the Black Sea. To achieve this result, she waged war not only by land; her fleet was sent around by Gibraltar in 1770 to blockade the Dardanelles and to reach Constantinople from the west—a feat it almost achieved. The enterprise failed because of Austria's fears and of Frederick II's willingness to turn the occasion to his own account by diverting Catherine to Poland; and also because of Russia's decision not to make food contraband. Yet, although Catherine did not win Constantinople, she broke the Turkish policy of exclusion from the Black Sea, and establishing Russia along its shores, made a new international situation. For the Black Sea was no longer a Turkish lake.

### *The Treaty of Kutchuk-Kainardji, 1774*

The Treaty of Kutchuk-Kainardji, 1774, which marked this first great milestone in Russia's progress, was, therefore, more than the signal of the Russian arrival. In ending the exclusively Turkish régime of the Straits and the Black Sea, it brought the modern phase of the Eastern question; for other powers besides Russia were destined soon to profit.<sup>11</sup> Moreover it occupies a unique position in Russo-Turkish relations. For, as has been frequently pointed out,

<sup>11</sup> See below, concerning the treaties of 1783, 1784.

it inaugurated the whole series or system of treaties by which Russia was to assert her claims. All previous treaties between Turkey and Russia were expressly cancelled by it and all subsequent ones, down to the Crimean War, were based upon it.<sup>12</sup>

Although Russia's territorial gains on the Black Sea were not large, since the Tartars were merely to be freed from the Turks and made independent—still the foothold had been won from which her conquests could be increased. In the same way a limited recognition of her rights to protect her co-religionists could later be made the excuse for an interference in Turkish affairs which challenged other powers and led to the Crimean War. But the clause which is of chief interest here is that which opened the Black Sea and the Straits to merchant ships flying the Russian flag. Russian merchants were to be given the same privileges in Turkish ports and waters as "the most favored nations"—England and France.

The text of Article XI, in which the concession is made, runs as follows: For the convenience and advantage of the two empires there shall be a free and unimpeded navigation for the merchant ships belonging to the two Contracting Powers, in all the seas which wash their shores; the Sublime Porte grants to Russian merchant vessels, namely, such as are universally employed by the other powers for commerce and in the

<sup>12</sup> Holland, *The Treaty Relations of Russia and Turkey*, p. 2. "The other great names of the series—Jassy, Bucharest, Ackerman and Adrianople—one and all have this characteristic in common; the Treaty of Kutchuk-Kainardji is the text, upon which they are but commentaries." See also *Ibid.* p. 35, for tabular comparison of the relation of these treaties to each other, clause by clause.

ports,<sup>13</sup> a free passage from the Black Sea into the White Sea and reciprocally from the White Sea into the Black Sea, as also the power of entering all the ports and harbors situated either on the sea coast, or in the passages and channels which join the seas. . . ."<sup>14</sup>

The text leaves some obscurity as to the extent of the grant, for the term "White Sea" (*bahr-i-sefid*) was applied to the Sea of Marmora as well as to the Mediterranean.<sup>15</sup> In 1779 a *convention explicative* was added to the treaty, insisting (Article VI) upon the limitation of Russian ships passing the Straits to those permitted England and France in their capitulations.<sup>16</sup> Finally, in 1783, a sweeping commercial treaty, much resembling the capitulations granted other countries, elaborated in some eighty-one clauses the conditions under which the Russian commercial flag was to be permitted, like that of England and France, the entry into Turkish ports. Russian commercial ships were to be permitted to pass the Straits without payment of any customs dues.

Catherine's ambition, however, was political rather than commercial. It was aimed at nothing less than

<sup>13</sup> The Russian text is clearer on this point ". . . those vessels only which are exactly like the vessels which the other powers employ in the commerce they have with the ports of the Sublime Porte," etc. Mischief, p. 185, note.

<sup>14</sup> Text as in Holland, *op. cit.*, p. 42. The original text was in Turkish, Russian and Italian. The Italian text with French translations made "by authority" in Russia, is given in Martens, *Recueil*, 1st ed. I, p. 507, IV, p. 606 and 2nd ed. II, p. 286. The French text is in Noradounghian (I, p. 324), and copied by Mischief, p. 184.

<sup>15</sup> Young, *op. cit.*, III, p. 67, note.

<sup>16</sup> Martens, *op. cit.*, 2nd ed. I, p. 658. The reference is blind, although it is repeated in 1783, for there are no prescriptions as to form and size of ship in the capitulations of France and England. Young, III, p. 68, note.

the conquest of Constantinople itself. With Austria as an ally she waged a new war on Turkey in 1789. But England, Holland and Prussia intervened (France was pre-occupied with the Revolution) and prevented the dismemberment of Turkey.<sup>17</sup> Poland became the victim instead. Russia, although victorious over the Turks, surrendered its conquests west of the Dniester, by the Treaty of Jassy, 1792. The Treaty of Kainardji was again confirmed, along with the *convention explicative* and the commercial treaty of 1783, "since commerce is the truest and most constant bond of reciprocal harmony."<sup>18</sup>

*The opening of the Black Sea to merchant ships*

As Russian merchant ships entered the Straits from the Black Sea end, it was obvious that the old principle governing the use of the Straits was broken. The other nations therefore sought to obtain the new advantages. Austria gained free passage for her ships of commerce in 1784.<sup>19</sup> England was not admitted to the full

<sup>17</sup> Treaties of Sistova (Turkey and Austria) in 1791, and of Jassy (Turkey and Russia) 1792. The text of Sistova is in Noradounghian, II, p. 13; L. Neumann, *Recueil des traités et conventions conclus par l'Autriche*, etc. I, p. 463; Martens, *Recueil*, 2nd ed. V, p. 245; that of Jassy is in Noradounghian, II, p. 16; Martens, *Recueil*, 1st ed. V, p. 53, 2nd ed. V, p. 291 (German translation); Martens and Cussey, *Recueil annuel*, etc., II, p. 65.

<sup>18</sup> Art. VIII.

<sup>19</sup> Noradounghian I, pp. 379-382. Sanad of February, 1784. See also firman of May, 1784 in Martens, *Nouveau Recueil Général*, 15, p. 462: "Since the merchant ships of the German court, friend and neighbour of the Sublime Porte, since the peace of Belgrade, have carried on commerce on the White Sea without being permitted to navigate the Black Sea, that court has requested the Sultan to permit them to sail out of the rivers into the Black Sea and from that sea into the White Sea, and so back and forth. The Sultan permits German merchants to freely carry on their business on land, sea and rivers and has given a sanad to the Austrian Minister." It is clearly stated here that the request was for the right to navigate not only the Black Sea but also the Straits.

benefits of this régime till 1799, when the privilege was granted by an official note from the Porte, which was reaffirmed in 1802.<sup>20</sup> France received the concession in 1802, Prussia in 1806.<sup>21</sup>

## 2. THE NAPOLEONIC ERA

The arrival of Russia had made the question of the Straits one of general European policy, but so far the solution affected the commercial rather than the naval side of the problem. The Turkish commercial monopoly was broken, but its right to control and so prohibit the passage of foreign war-ships through its territorial waters remained unimpaired. The problem of naval strategy was still to be settled; indeed it was hardly a problem, except for Russia, prior to the nineteenth century.

### *Effect of Napoleon's Egyptian expedition*

Napoleon's Egyptian expedition definitely opened the modern phase of the Near Eastern question as we know it. France, for centuries the one Christian power most friendly to Turkey, now became an invader. England had its attention drawn to the strategic importance of the Near Eastern route to India, and, for the first time awake to its importance, began to play in earnest that rôle in the Levant which it has followed with relative consistency until the present war—that of supporter of the Ottoman. Russia, drawn to the Straits through the same Napoleonic invasion, became the main competitor of England for the control of those who controlled the

<sup>20</sup> Hertslet, *Commercial Treaties*, V, p. 499, VII, p. 1021.

<sup>21</sup> *Ibid.*, p. 78.

Straits, since Constantinople stands at the cross-roads of the route to India and the route to Odessa. Hence, as the Napoleonic wars revealed increasing signs of the weakness of the Ottoman Empire, the three-fold contest (for Austria was not so directly involved) of England, France and Russia centered to a large degree at Constantinople.

The first effect of Napoleon's campaign in the Orient was to throw Turkey—so far as the Straits were concerned—into the hands of Russia. The appeal of the Sultan to the Czar brought a Russian fleet, which entered the Bosphorus in September, 1798; and the resulting alliance<sup>22</sup> between Turkey and Russia was joined a few days later by England.<sup>23</sup> The barriers once down, the Russian fleet passed and repassed the Straits without regard to treaty stipulations, and Russia began definitely to formulate plans for the partition of Turkey (1800).<sup>24</sup> A year later Napoleon, victorious at Marengo, with western Europe breaking up at his behest, was planning anew the march on India, this time with the half-crazed Paul I as his ally. As a counter to the danger which lurked behind the Straits, England took Malta and secured Egypt by an Indian army. The murder of the Czar (March, 1801) and the accession of Alexander I, friendly to England, made possible the peace of Amiens (March, 1802).<sup>25</sup>

<sup>22</sup> Treaty of Constantinople, December 23, 1798; cf. Noradounghian, II, p. 24.

<sup>23</sup> January 5, 1799, *ibid.*, p. 28.

<sup>24</sup> Dascovici, *La question du Bosphore et des Dardanelles*, pp. 147-148.

<sup>25</sup> For the section relating to Turkey cf. Noradounghian, II, p. 50. A separate commercial treaty was concluded a month later which, for the first time, allowed the commercial freedom of the Black Sea and the Straits, by extending the Capitulation of 1740 to include this grant; cf. Noradounghian, II, pp. 51-53.

*The policy of Alexander I*

The initial policy of Alexander was to preserve, rather than destroy, a weak Ottoman power at the Straits, and to turn its weakness to Russia's advantage.<sup>26</sup> The Russian fleet continued to pass the Straits, for, in the renewed war with Napoleon, Russia was again England's ally; and when Turkey, won over by Napoleon's ambassador Sebastiani, declared war on the side of France, Britain came to the support of Russia, sending a fleet which forced the Dardanelles and actually reached, and for a moment overawed, Constantinople (March, 1807). The energy of Sebastiani in hastily organizing the defence of the city caused its withdrawal, however, without having achieved its purpose. Four months later (July 7, 1807) the Treaty of Tilsit gave a new turn to events.<sup>27</sup>

*The significance of the "Peace of the Dardanelles"*

It is not necessary here to enter into the details of Napoleon's and Alexander's scheme for the partition of the Orient; but it should be recalled that the main point in that grandiose plan upon which the two emperors failed to reach agreement was the problem of who should hold Constantinople and the Straits.<sup>28</sup> More important, however, than these arrangements, because more lasting in its influence upon the history

<sup>26</sup> Cf. Dascovici, *op. cit.*, p. 150.

<sup>27</sup> Driault, *La question d'Orient en 1807*, in *Revue d'histoire diplomatique*, XIV, (1900), p. 436, states that after the Treaty of Tilsit the Czar instructed the Russian war-ships in the Mediterranean to pass into the Black Sea, *if the Porte gives them permission*; otherwise they are to go through the Straits of Gibraltar to French ports for shelter and supplies. Thus Russia recognized the rule.

<sup>28</sup> For the tortuous negotiations see Tatistcheff, *Alexandre I<sup>er</sup> et Napoleon d'après leur correspondance inédite, 1801-1812* (Paris, 1891); Cf. Phillipson and Buxton, *The Question of the Bosphorus and the Dardanelles*, pp. 41, 42.

of the Straits, was the fact that England, now again obliged to be friendly to Turkey, made with the Porte the Treaty of Constantinople, commonly known as the Peace of the Dardanelles, which contained the first formal assertion, in international treaty, of the principle of the closing of the Straits to ships of war.<sup>29</sup>

It was significant that this first statement should refer to the regulation as the "ancient rule of the Ottoman Empire" which excluded war-ships of every nation from entering either the Dardanelles or Bosphorus. Article II of the treaty runs as follows:

"As it has at all times been forbidden for vessels of war to enter into the canal of Constantinople, that is, into the Straits of the Dardanelles and into that of the Black Sea, and as that ancient rule of the Ottoman Empire should be observed henceforth in times of peace with reference to any Powers whatsoever, the Court of Britain promises also to conform to this principle."

The clause was cleverly drawn. Turkey insists on her sovereign rights and wins from Britain a formal recognition of them. In reality, Britain becomes the guardian of the Straits almost as much as Turkey. The provision constitutes the germ of the international convention laid down in the Straits Convention of 1841 when England again was to have its say as to the settlement of the question.<sup>30</sup>

<sup>29</sup> For the story of negotiations see the two-volume account of the British Ambassador, Sir Robert Adair, *The Negotiations for the Peace of the Dardanelles in 1808-9* (London, 1845). The text is in Noradounghian, II, p. 81.

<sup>30</sup> Cf. Phillipson and Buxton, *op. cit.*, p. 43. Goriainow, *op. cit.*, Chap. II gives Russian data.

Upon the whole, the Napoleonic period left the matter as Turkey and England wished.

### 3. RUSSIAN TRIUMPHS

At the Congress of Vienna the question of the Straits was not considered, nor even the larger problem of the Ottoman Empire. The British Government supported Metternich's plan to guarantee the existence of Turkey, but the Porte itself was suspicious of too much guardianship by the British. British mediation suggested too nearly the idea of a protectorate. In a sense, therefore, Turkey played into the hands of the Czar, who wished to avoid any guarantee of Ottoman integrity; and Turkey remained outside the European state-system.

#### *The Near Eastern question after the Congress of Vienna*

But the Near Eastern question could not be shelved. European Turkey in the years following the Congress of Vienna became the theater of feud and massacre, culminating in the horrors of the Greek War of Independence (1821-1829). Official England temporized with its "ancient ally" the Turk, and played with Metternich upon the pacific temper of Alexander I. But when the forceful Nicholas I took control of Russia (1825), he quickly cowed the Porte into accepting the terms of the Treaty of Ackerman (October, 1826), which, among its other terms, granted Russia complete freedom "in all the seas and waters of the Ottoman Empire without any exception" for its merchant shipping.<sup>31</sup>

<sup>31</sup> Article VII, clause 2. Cf. Noradounghian, II, p. 120; State Papers, XIII, p. 899; Martens, *Nouveau Recueil*, VI, p. 1053.

Meanwhile Britain brought about an accord with France and Russia for joint intervention in the Eastern question;<sup>32</sup> but that British reluctance to weaken the Ottoman power, which muddled British policy with reference to Greece, finally left it to the Czar to exert the coercion necessary for securing a settlement. Russian armies marched across the Balkans for the first time and forced upon the Turk the humiliating terms of the Treaty of Adrianople (September, 1829).

*The Treaty of Adrianople, 1829*

"In the long history of the Eastern Question, the Treaty of Adrianople is inferior only in importance to those of Kainardji and Berlin."<sup>33</sup> The independence of Greece not only marked a further stage in the dissolution of the Turkish Empire; it also changed the standing of Turkish shipping, since so many of the maritime interests of the Ottoman Empire were in Greek hands. But the treaty as well (Article VII) reiterated in most sweeping terms the grant of freedom to Russian commercial ships in all Ottoman waters, with the additional and unique proviso that no visit or search was to be exercised over Russian vessels passing the Straits. The degree of Russian domination was expressed in the additional provision that any act or interference by the Turk to this complete freedom would be met by "reprisals against the Ottoman Empire."

The text of Article VII of the treaty runs as follows: "Russian subjects shall enjoy, throughout the

<sup>32</sup> Treaty of London. The protocols are in Martens, *Nouveau Recueil*, XII, pp. 1-265; treaty, *ibid.*, p. 465; Noradounghian, II, p. 130.

<sup>33</sup> Marriott, *The Eastern Question*, p. 199.

whole extent of the Ottoman Empire, as well by land as by sea, the full and entire freedom of trade secured to them by the treaties concluded heretofore between the two High Contracting Powers. This freedom of trade shall not be molested in any way, nor shall it be fettered in any case, or under any pretext, by any prohibition or restriction whatsoever, nor in consequence of any regulation or measure, whether of public government or internal legislation. Russian subjects, ships and merchandise shall be protected from all violence and imposition. The first shall remain under the exclusive jurisdiction and control of the Russian minister and consuls; Russian ships shall never be subjected to any search on the part of the Ottoman authorities, neither out at sea nor in any of the ports or roadsteads under the dominion of the Sublime Porte; and all merchandise or goods belonging to a Russian subject may, after payment of the custom-house dues imposed by the tariffs, be freely sold, deposited on land in the warehouses of the owner or consignee, or transhipped on board another vessel of any nation whatsoever, without the Russian subject being required, in this case, to give notice of the same to any of the local authorities, and much less to ask their permission so to do. It is expressly agreed that the different kinds of wheat coming from Russia shall partake of the same privileges, and that their free transit shall never, under any pretext, suffer the least difficulty or hindrance.

"The Sublime Porte engages, moreover, to take especial care that the trade and navigation of the Black Sea, particularly, shall be impeded in no manner whatsoever. For this purpose it admits

and declares the passage of the Strait of Constantinople and that of the Dardanelles to be entirely free and open to Russian vessels under the merchant flag, laden or in ballast, whether they come from the Black Sea for the purpose of entering the Mediterranean, or whether, coming from the Mediterranean, they wish to enter the Black Sea; such vessels, provided they be merchant ships, whatever their size and tonnage, shall be exposed to no hindrance or annoyance of any kind, as above provided. The two Courts shall agree upon the most fitting means for preventing all delay in issuing the necessary instructions. In virtue of the same principle the passage of the Strait of Constantinople and that of the Dardanelles is declared free and open to all the merchant ships of Powers who are at peace with the Sublime Porte, whether going into the Russian ports of the Black Sea or coming from them, laden or in ballast, upon the same conditions which are stipulated for vessels under the Russian flag.

“Lastly, the Sublime Porte, recognizing in the Imperial Court of Russia the right of securing the necessary guarantees for this full freedom of trade and navigation in the Black Sea, declares solemnly, that on its part not the least obstacle shall ever, under any pretext whatsoever, be opposed to it. Above all, it promises never to allow itself henceforth to stop or detain vessels laden or in ballast, whether Russian or belonging to nations with whom the Ottoman Porte shall not be in a state of declared war, which vessels shall be passing through the Strait of Constantinople and that of the Dardanelles, on their way from the Black Sea into the Mediterranean, or from the Mediterranean into

the Russian ports of the Black Sea. And if, which God forbid, any one of the stipulations contained in the present article should be infringed, and the remonstrances of the Russian minister thereupon should fail in obtaining a full and prompt redress, the Sublime Porte recognizes beforehand in the Imperial Court of Russia the right of considering such an infraction as an act of hostility, and of immediately having recourse to reprisals against the Ottoman Empire."<sup>34</sup>

*Russia profits by the revolt of Mehemet Ali*

In 1832, the existence of the Ottoman Empire was threatened by the great revolt of Mehemet Ali, whose troops, overrunning most of Asiatic Turkey, were threatening the Straits. Again, as in the Napoleonic crisis, Russia profited. France was on the side of Mehemet, England declined to act; and the hard-pressed Sultan was obliged to invite Russia to come in, with fleet and army, and save him from the rebels. The results were a Russian fleet and troops for the defence of Constantinople itself, the passage of the Dardanelles by Russian warships, and the establishment of what amounted to a Russian protectorate over Turkey.

*The Treaty of Unkiar-Skelessi, 1833*

The treaty which embodied these conditions was signed at Unkiar-Skelessi in 1833.<sup>35</sup> By it Russia guar-

<sup>34</sup> This is a most unusual clause, and indicates the extent of Turkey's helplessness.

For a discussion of the treaty see Phillipson and Buxton, *op. cit.*, p. 53. Text in Noradounghian, II, p. 166; Martens, *Nouveau Recueil*, VII, p. 143.

<sup>35</sup> Noradounghian, II, p. 230. It was to run for eight years. Phillipson and Buxton, p. 62.

anteed the existence of Turkey, offering the use of Russian arms to maintain it. The Sultan's *quid pro quo* was indicated in a separate, secret clause:

"His Majesty, the Emperor of all the Russias, wishing to spare the Sublime Ottoman Porte the expense and inconvenience which might be occasioned by affording substantial aid, will not ask for that aid if circumstances should place the Sublime Porte under the obligation of furnishing it. The Sublime Ottoman Porte, in place of the help which it is bound to furnish in case of need, according to the principle of reciprocity in the open treaty, shall limit its action in favor of the Imperial Court of Russia to closing the Straits of the Dardanelles, that is to say, not to permit any foreign ship of war to enter therein under any pretext whatever."<sup>36</sup>

The Treaty of Unkiar-Skelessi marks the zenith of Russian influence at Constantinople, and the secret clause is the expression of it. While its ambiguity has been the subject of much discussion, it was taken by Russia at least to mean that it guaranteed a free passage for Russian warships through the Straits "in case of need"—which covers every pretext—and closed the entrance to the Black Sea to every other power.<sup>37</sup>

Palmerston objected that these terms were inconsistent with the treaty of 1809, by which the Porte had agreed to prohibit the passage to ships of war of *any* foreign power. The English fleet sailed up to Besika Bay and France sent an identic note to that

<sup>36</sup> *Ibid.*, p. 231.

<sup>37</sup> Cf. Marriott, *op. cit.*, p. 210. See discussion in Phillipson and Buxton, pp. 61-67.

of England. But no one wanted war, and the western Powers waited their chance.

The United States, strangely enough, was to test the strength of the Russian influence in 1835. An American frigate reached Constantinople and tried to secure permission to pass to the Black Sea. The Porte submitted the request to Boutenieff, the Russian Ambassador, who advised that it be refused, for fear the European Powers use the incident as a pretext for their own ships to pass.<sup>38</sup>

<sup>38</sup> Phillipson and Buxton, p. 69.

IV.  
FROM THE TREATY OF LONDON (1840)  
TO THE  
CONVENTION OF THE STRAITS (1841)

*Conflict of the Powers after the Treaty of Unkiar-Skelessi*

The secret clause of the Treaty of Unkiar-Skelessi was soon whispered abroad in rival chancelleries, and European diplomacy reflected the disturbance it created. While England and France protested, Metternich's deft hand secured from Russia an avowal of innocent purposes,<sup>39</sup> which tided Europe through the crisis. The insincerity of Turkey toward Russia, which had imposed such humiliating terms upon it, also made Russia's triumph less secure and therefore less menacing. It was obvious as well that England and France would not leave to Russia the enjoyment of the Treaty of Unkiar-Skelessi if they could help it.

In 1839 war broke out again between the Sultan and Mehemet Ali, resulting in the complete defeat of the Turk. Again the Ottoman Empire seemed about to dissolve, with Russia waiting to share the spoils on the north and France about to profit in Egypt by its friendship for Mehemet Ali. England had no desire to see either of these results. Metternich had, at the outbreak of the war, proposed action by the European Concert, and France and England quickly took up the idea of common action, although French public opinion objected to too close association with English aims. Russia, taking advantage of this rift between England and France, refused to join and advised the

<sup>39</sup> Convention of Münchengrätz, 1833. Both parties to combine to maintain the Turkish Empire as against others designing its overthrow, etc. Martens, *Recueil des traités et conventions conclus par la Russie* (1898) IV, pt. I, p. 445 ff.; Mischef, p. 293 ff.

Sultan to make peace with Mehemet directly, without reference to Europe. Russia felt that the action of the Powers, if they came together, would undo the advantages she had held since Unkiar-Skelessi. However, Metternich acted quickly and anticipated objections by having the Austrian ambassador at Constantinople present the Sultan a *collective note* from the Five Powers, stating that these Powers had reached an accord on the Eastern question, and holding the Porte to "abstain from any final decision without their concurrence and to await the results of their interest in its welfare." <sup>40</sup>

Russia having apparently given in on the formal question of the acceptance of the Concert, the Czar's ambassador at London made the most of the situation to sow dissension between France and England. The Czar's strong personal dislike of France was an element in the situation, playing into the plans of Palmerston, whose objections to the French plan of favoring Mehemet Ali's ambitions upon Syria were soon shared by Berlin and Vienna as well as St. Petersburg. Then Russia opened new diplomatic possibilities. To Palmerston's surprise, the Government of the Czar went so far as to intimate a willingness to reconsider the Treaty of Unkiar-Skelessi, stating that the Czar had regarded that treaty not as an implement for establishing an absolute protectorate over Turkey but merely as a means of safety for the Porte.<sup>41</sup> The Treaty of Unkiar-Skelessi might be revised by proclaiming the closing of the Straits *at all times* a universally recognized principle of the public law of Europe. Upon the bases of such plans the

<sup>40</sup> *British and Foreign State Papers*, XXVIII, p. 408.

<sup>41</sup> Goriainow, p. 67.

Czar's Government then proposed that England's fleet attack Mehemet's port of Alexandria and the Russian army come down to Constantinople to safeguard the capital from the Syrian rebels. Palmerston naturally refused to enter upon a plan which brought the Russians to Constantinople alone, and it was only after rather protracted negotiations, to which France was not a party—her interest in Egypt having led to independent negotiations with Turkey—that an agreement was reached by the four Powers of Russia, Britain, Prussia and Austria.

*The Treaty of London, 1840*

The Treaty of London, in which this agreement was registered, began by stating (Article I) that the Contracting Powers had come to an agreement with Turkey as to what terms Mehemet Ali should receive, and that (Article II) in case Mehemet refused to accept them, they, the Powers, would undertake to force him to do so. "Their Majesties engage to take, at the request of the Sultan, measures concerted and settled between them, in order to carry that arrangement into effect." Article III states that if Constantinople is threatened by invasion the Powers will send help, and Article IV safeguards the Sultan's sovereignty for the future, in case Russia and the western Powers should—for this one time—send their armed forces through the Straits.

These two articles are fundamental in the history of the international law of the Straits. They run as follows:

"Article III. If Mehemet Ali, after having refused to submit to the conditions of the arrangement above-mentioned (specified in a separate Act), should direct his land or sea forces against Constan-

tinople, the High Contracting Parties, upon the express demand of the Sultan, addressed to their Representatives at Constantinople, agree, in such case, to comply with the request of that Sovereign, and to provide for the defence of his throne by means of a cooperation agreed upon by mutual consent, for the purpose of placing the two Straits of the Bosphorus and Dardanelles, as well as the capital of the Ottoman Empire, in security against all aggression.

"It is further agreed that the forces which, in virtue of such concert, may be sent as aforesaid, shall there remain so employed as long as their presence shall be required by the Sultan; and when His Highness shall deem their presence no longer necessary, the said forces shall simultaneously withdraw, and shall return to the Black Sea and to the Mediterranean respectively.

"Article IV. It is, however, expressly understood, that the cooperation mentioned in the preceding Article, and destined to place the Straits of the Dardanelles and of the Bosphorus, and the Ottoman capital, under the temporary safeguard of the High Contracting Parties against all aggression of Mehemet Ali, shall be considered only as a measure of exception adopted at the express demand of the Sultan, and solely for his defence in the single case above-mentioned; but *it is agreed that such measure shall not derogate in any degree from the ancient rule of the Ottoman Empire, in virtue of which it has in all times been prohibited for ships of war of foreign Powers to enter the Straits of the Dardanelles and of the Bosphorus.* And the Sultan, on the one hand, hereby declares that, excepting the contin-

gency above-mentioned, it is his firm resolution to maintain in future this principle invariably established as the ancient rule of his Empire; and as long as the Porte is at peace, to admit no foreign ship of war into the Straits of the Bosphorus and of the Dardanelles; on the other hand, their Majesties the Queen of the United Kingdom of Great Britain and Ireland, the Emperor of Austria, King of Hungary and Bohemia, the King of Prussia, and the Emperor of all the Russias, engage to respect this determination of the Sultan, and to conform to the above-mentioned principle."<sup>42</sup>

*The closing of the Straits to foreign warships in time of peace becomes a part of European public law*

The significance of the Treaty of London is that it translates into European public law a principle which had previously been recognized only in the dealings of individual Powers with Turkey. The "ancient rule of the Ottoman Empire" was formulated by the Sultan for his dealings with the various States. Now "four of the leading Powers jointly recognized in a formal international instrument the applicability of the rule of closing the Bosphorus and the Dardanelles to warships of all States, whilst the Sultan, engaging to observe this rule in general, formally surrendered his former right of opening the Straits at discretion."<sup>43</sup>

<sup>42</sup> Hertslet, *Map of Europe*, II, p. 1008. French text in *State Papers*, XXVIII, p. 342, and Noradounghian, II, p. 303 ff. *Parliamentary Papers*, Vol. LXXXIII, No. 43, p. 20.

<sup>43</sup> Phillipson and Buxton, p. 77. By a further protocol the Porte "reserves to itself as heretofore to deliver Passes to light vessels under flag of War which may be employed according to custom for the service of the correspondence of the legations of friendly Powers." Hertslet, *op. cit.*, II, p. 1021. This was incorporated in the Convention of 1841.

*The Convention of the Straits, 1841*

The next year France joined in a general treaty along these lines, recognizing the obligation of the Sultan to close the Straits to foreign ships of war in time of peace. The Convention was accepted by other Powers later, and became a general rule of European international law.<sup>44</sup>

The text of this Convention, to which discussion naturally reverts, is very brief and clear, consisting of the following three articles and an additional one dealing with ratifications:

"Article I. His Highness the Sultan, on the one part, declares that he is firmly resolved to maintain for the future the principle invariably established as the ancient rule of the Empire, and in virtue of which it has at all times been prohibited for the Ships of War of Foreign Powers to enter the Straits of the Dardanelles and the Bosphorus; and that so long as the Porte is at peace, His Highness will admit no Foreign Ship of War into the said Straits.

"And their Majesties the Queen of the United Kingdom of Great Britain and Ireland, the Emperor of Austria, King of Hungary and Bohemia, the King of the French, the King of Prussia, and the Emperor of all the Russias, on the other part, engage to respect this determination of the Sultan and to conform themselves to the principle above declared.

"Article II. It is understood that in recording the inviolability of the ancient rule of the Ottoman

<sup>44</sup> *Ibid.*, p. 79. The detailed story of the diplomacy of 1840-41 is given in Mischef, Chapter V, and in Goriainow, Chapter X. A good summary is given by Dascovici, *op. cit.*, p. 184 ff.

Empire mentioned in the preceding Article, the Sultan reserves to himself, as in past times, to deliver Firmans of passage for light Vessels under Flag of War, which shall be employed as is usual in the service of the Missions of Foreign Powers.

"Article III. His Highness, the Sultan, reserves to himself to communicate the present Convention to all the Powers with whom the Sublime Porte is in relations of friendship, inviting them to accede thereto."

This Convention, reaffirmed in its essentials in the Treaty of Paris in 1856, and again in the Conference of London in 1871, was the fundamental document in the international law of the Straits down to the war of 1914. The significant phrase is short and clear: "So long as the Porte is at peace, His Highness will admit no Foreign Ships of War into the said Straits."

## V.

## THE TREATY OF PARIS, 1856

*The Crimean War*

The Straits Convention, which had robbed Russia of its predominance in Turkish affairs could not be accepted by Russia with good grace. Nicholas began to make significant reference to the "sick man of Europe" whose inheritance should be divided among the Powers.<sup>45</sup> The first step toward this end, however, showed that the inheritors could not agree. The quarrel over the spoils began, not over the control of the Straits, but over prerogatives of Holy Russia as protector of the Orthodox clergy and of France as the ancient champion of Catholicism in the Orient, at the holy places in the Sultan's realm. Russia finally, unable to secure full privileges from the Porte, took matters into her own hands and invaded Turkey in 1853.<sup>46</sup>

The action of Russia at once involved France, as Napoleon III was strongly committed to a clerical policy, and England, following its traditional lines, was drawn into common action with France in order to defend the integrity of the Ottoman Empire. The British and French fleets were despatched into the

<sup>45</sup> It was not a new expression. See Palmerston in the House of Commons, July 11, 1833. For the proposed partition scheme see *Parliamentary Papers* for 1844, LXXI, pt. V, I. Cf. Martens, *Traité conclus par la Russie*, XII, p. 306 ff. (Phillipson and Buxton, p. 84.)

<sup>46</sup> Nesselrode, the Russian minister, stated that they came not to make war but simply to secure material guarantees. It was Turkey that finally took the offensive and tried to drive the Russians from the soil of Turkey.

Sea of Marmora, technically justifying themselves by the Straits Convention. Russia claimed that, under pretext of saving Turkey, they had openly violated the Convention. The situation rapidly drifted into war, France and England declaring war on Russia after making a treaty of alliance with Turkey. The war was fought out on the Crimea, by the aid of the allied fleets which struck at the great Russian fortress on the Black Sea, Sebastopol.

In the peace negotiations, which were begun before the Crimean War was finished, the most difficult questions to settle were the questions of the Straits and the Black Sea. It was to be expected that, after a disastrous war, Russia would surrender the position it had held, with reference to Turkey, but to accept the full humiliation of a neutralized sea on its southern frontier was to accept the terms of the vanquished. This it found itself obliged to do after the fall of Sebastopol.

### *The Treaty of Paris, 1856*

The Treaty of Paris, in which these important clauses were embodied, was the result of the Conference at Paris of the Powers of Europe (including Sardinia) and for the next fourteen years it determined the status of the Straits.<sup>47</sup>

According to Article VII, Turkey was "admitted to participate in the advantages of the public law and system of Europe." Apart from the territorial settlements, the Treaty dealt mainly with three points:

<sup>47</sup> Text in Hertslet, *Map of Europe*, II, p. 1250; Phillipson, *Termination of War and Treaties of Peace*, pp. 350-7; Holland, *European Concert in the Eastern Question*, pp. 241, ff. For full discussion of the Conference of Paris see Goriainow, Mischef, Dascovici, Debidour, etc. As the treaty dealt but slightly with the Straits, Phillipson and Buxton have rather slight treatment.

the question of the Straits; the neutralization of the Black Sea; and the navigation of the Danube.

*The Convention of the Straits reaffirmed*

With reference to the Straits, a separate Convention between the six Powers (including Sardinia) and the Sultan, signed the same time as the Treaty and attached to it (by Article X of the Treaty) reaffirmed textually the clauses of the Convention of the Straits. A further clause was added, in view of the proposals in the Treaty itself for the control of the navigation of the Danube, by which each of the Powers was permitted to send through the Straits two light vessels of war for service off the mouth of the Danube. Otherwise the Convention which regulated the régime of the Straits in 1856 merely reenacted the Convention of 1841.

*The neutralization of the Black Sea*

The most significant act of the Conference at Paris, however, was the declaration of the neutralization of the Black Sea, an attempt to forestall future complications in the Near East by imposing a sufficiently sweeping prohibition on Russian preparedness. Russia was to be denied not merely a fleet on its southern coastal waters but even arsenals along its shores. The clauses of the Treaty run as follows:

"Article XI. The Black Sea is neutralized; its Waters and its Ports, thrown open to the Mercantile Marine of every Nation, are formally and perpetually interdicted to the Flag of War, either of the Powers possessing its Coasts, or of any other Power, with the exceptions mentioned in Articles XIV and XIX of the present Treaty.

"Article XII. Free from any impediment, the Commerce in the Ports and Waters of the Black Sea shall be subject only to regulations of Health, Customs, and Police, framed in a spirit favorable to the development of Commercial transactions.

"In order to afford to the Commercial and Maritime interests of every Nation the security which is desired, Russia and the Sublime Porte will admit Consuls into their Ports situated upon the Coast of the Black Sea, in conformity with the principles of International Law.

"Article XIII. The Black Sea being neutralized according to the terms of Article XI, the maintenance or establishment upon its Coast of Military-Maritime Arsenals becomes alike unnecessary and purposeless; in consequence, His Majesty the Emperor of All the Russias, and His Imperial Majesty the Sultan, engage not to establish or to maintain upon that Coast any Military-Maritime Arsenal.

"Article XIV. Their Majesties, the Emperor of All the Russias and the Sultan, having concluded a Convention for the purpose of settling the Force and the Number of Light Vessels necessary for the service of their Coasts, which they reserve to themselves to maintain in the Black Sea, that Convention is annexed to the present Treaty and shall have the same force and validity as if it formed an integral part thereof. It can not be either annulled or modified without the assent of the Powers signing the present Treaty."

*The significance of the neutralization of the Black Sea*

The neutralization of the Black Sea was, in a sense

an innovation in international law, since it attempted to apply to a sea a new conception, that of neutralization, to be added to those of the simple categories of Grotius, free sea and territorial sea (*mare apertum* or *mare liberum* and *mare clausum*).<sup>48</sup> It was an application to the sea of a principle hitherto confined to land. But the proposition was not made in the constructive sense nor applied in a way that gave promise of future development toward the great goal of generalized naval disarmament. It was a chapter of naval strategy by which the advantages of victory could be maintained against Russia. It lacked the element of internationalization, for just outside the Bosphorus the fleets of Europe could ride unchecked, and in time of war the Sultan might let them through; disarmament was enforced on the Russians alone. The complement of the plan, the neutralization of the Straits, was lacking, for Turkey was still a Power.

<sup>48</sup> Cf. Phillipson and Buxton, p. 99.

## VI

## THE TREATY OF LONDON, 1871

*Russia denounces the Treaty of Paris*

The years following the Treaty of Paris were those in which the nationalist spirit of Europe revealed itself in fuller and fuller consciousness as the new railways and steam shipping wrought together the economic fabric of the State, while education and the spread of journalism made possible a citizenship responsive to large political appeals. The era of Italy's and Germany's unification, and of England's world wide development, could not well leave Russia suffering the constant sense of humiliation in the limitation upon her power of defense along the whole southern frontier. But, though the Czar Alexander was deeply stung by the reminder of defeat,<sup>49</sup> he refused steadily to bring up the question of the revision of the Treaty of Paris so long as the proposition was likely to bring another war.<sup>50</sup> His patience was rewarded, however, by the year 1870, when the Franco-Prussian war offered a chance for Russia to recover what she had surrendered, since western Europe was too much preoccupied with its own affairs to interfere.

Bismarck's assent to Russia's denunciation of the objectionable terms of the Treaty of Paris was easily won, and the other Powers not being in a position to

<sup>49</sup> Goriainow, p. 144 ff.

<sup>50</sup> France approached her in 1858 before the war with Austria, and Austria after the war, 1859, and again in 1867. William I of Prussia approached her also after the Seven Weeks' War in 1866. But, although he plainly showed how he felt, Alexander refused to act.

make war, Gortchakoff sent a circular dispatch in October, 1870.<sup>51</sup> In it Russia protested that fifteen years' experience had proved the falseness of the assumptions in the Treaty of Paris that neutralization of the Black Sea would safeguard the peace of all interested. In reality, while Russia was disarming in the Black Sea, Turkey maintained unlimited naval forces in the Aegean and Straits, and France and England could mobilize their squadrons in the Mediterranean. There was, so he claimed, a contradiction between the Treaty itself and the attached Convention of the Straits; the former forbade war-ships to sail the Black Sea at any time, the latter prohibited them from passing the Straits into the Black Sea only in time of peace. This exposed the shores of Russia to attack from even less powerful states, while Russia was unprepared. Moreover, in the interval the treaty had been modified with reference to Moldavia and Wallachia; infractions had occurred in that "whole squadrons" of foreign men-of-war had been admitted to the Black Sea, etc.<sup>52</sup>

"After maturely considering this question, His Imperial Majesty has arrived at the following conclusions, which you are instructed to bring to the knowledge of the Government to which you are accredited:

<sup>51</sup> Hertslet, *Map of Europe*, III, p. 1892; Goriainow, p. 156; Phillipson and Buxton, p. 105.

<sup>52</sup> "In 1871 a return laid before Parliament showed that the number of Foreign Ships of War which had passed the Straits were: In 1862, 1 British; in 1866, 1 American; in 1868, 1 American, 2 Austrian, 1 French, 1 Russian; in 1869, 1 Prussian. It also appeared that in 7 other instances, questions had arisen with regard to the passage of Foreign Ships of War through the Straits, but that in no case had a violation of treaty been shown to have taken place." Hertslet, *op. cit.*, III, p. 1895, note. Also Young, *in loco*.

"Our illustrious Master can not admit, *de jure*, that Treaties, violated in several of their essential and general clauses, should remain binding in other clauses directly affecting the interests of his Empire.

"His Imperial Majesty can not admit, *de facto*, that the security of Russia should depend on a fiction which has not stood the test of time, and should be imperilled by her respect for engagements which have not been observed in their integrity.

"Confiding in the feelings of justice of the Powers who have signed the Treaty in 1856, as well as in their consciousness of their own dignity, the Emperor commands you to declare that His Imperial Majesty can not any longer hold himself bound by the stipulations of the Treaty of 18/30th March, 1856, as far as they restrict his Sovereign Rights in the Black Sea;

"That His Imperial Majesty deems himself both entitled and obliged to denounce to His Majesty the Sultan the Special and Additional Convention appended to the said Treaty, which fixes the number and size of the Vessels of War which the two Powers bordering on the Black Sea shall keep in that Sea;

"That His Majesty loyally informs of this the Powers who have signed and guaranteed the General Treaty, of which the Convention in question forms an integral part;

"That His Majesty restores to the Sultan the full exercise of his rights in this respect, resuming the same for himself. . . ." <sup>53</sup>

The note concluded with the statement that the Czar had no desire to revive the Eastern question,

<sup>53</sup> Hertslet, III, pp. 1894-5.

and adhered to the general principles of 1856 which fixed the position of Turkey in the European system.<sup>54</sup>

*England objects to the Gortchakoff note*

England protested at once. Lord Granville, Foreign Minister, refused to admit that one signatory to a treaty could thus release itself from its obligations. "It has always been held that that right [to release a party to a treaty from its obligations] belongs only to the Governments who have been party to the original instrument."<sup>55</sup>

"The despatches of Prince Gortchakoff appear to assume that any one of the Powers who have signed the engagement may allege that occurrences have taken place which, in its opinion, are at variance with the provisions of the treaty, and, although this view is not shared or admitted by the co-signatory Powers, may found upon that allegation, not a request to these Governments for the consideration of the case, but an announcement to them that it has emancipated itself, or holds itself emancipated, from any stipulations of the treaty which it thinks fit to disapprove. Yet it is quite evident that the effect of such doctrine and of any proceeding which, with or without avowal, is founded upon it, is to bring the entire authority and efficacy of treaties under the discretionary control of each of the Powers who may have signed them; the result of which would be the entire destruction of treaties in their essence. For whereas their whole object is to bind

<sup>54</sup> The circular was accompanied by special despatches to each government. See Goriainow, p. 162. (Summarized by Phillipson and Buxton, p. 107.) There is a good treatment in Dascovici, p. 230 ff.

<sup>55</sup> Hertset, p. 1899.

Powers to one another, and for this purpose each one of the parties surrenders a portion of its free agency, by the doctrine and proceeding now in question, one of the parties in its separate and individual capacity brings back the entire subject into its own control, and remains bound only to itself."<sup>56</sup>

The British Government were not (formally at least) objecting to a consideration of a revision of the Treaty of Paris, concerning which a certain scepticism had long existed in high quarters.<sup>57</sup> What they questioned was the right of one party to a treaty to declare it void when it no longer suited its convenience. The Russian claim, if admitted as a precedent, might undermine the whole structure of international law by reducing contracts to a mere basis of temporary expedience. There could be no stability in the international relations of the Powers if it would be impossible to calculate upon the fulfilment of solemn obligations. In short, we have already before us, in the technical language of the chancelleries, what is now so aptly known as the doctrine that a treaty may be treated as "a scrap of paper," to be torn up when more important issues seem involved.

*Theory of the relativity of treaties: condition of  
"rebus sic stantibus"*

Von Bethmann-Hollweg's phrase carries its own condemnation. But yet there is something underlying his and Gortchakoff's point of view, which international law has long recognized. Treaties must not be

<sup>56</sup> Phillipson and Buxton, p. 110.

<sup>57</sup> Gladstone stated in Parliament that Palmerston had always doubted the possibility of a lasting neutralization of the Black Sea. Clarendon had also been of this opinion. Cf. Hansard, 3rd Ser., CCIV, p. 850. Phillipson and Buxton, p. 127.

permitted to develop the rigidity of sacrosanct and immutable laws, binding like shackles the free life of nations. They are agreements reached under certain definite conditions and when those conditions are radically altered the treaties must be either revised or given up; or else the situation becomes intolerable. If, therefore, a nation is called upon to fulfil its obligation under changed circumstances, it may, in international law, plead that the obligation no longer holds when the conditions of its acceptance do not exist. This theory of the relativity of treaties to the conditions for which they were drawn up has been expressed in concise form as a principle of treaty-making. It is admitted by most jurists and by all the Governments of civilized states that "all treaties are concluded under the tacit condition of *rebus sic stantibus*,"<sup>58</sup> which means that they are valid only as long as the circumstances remain substantially as they were.

But the point at issue, both in 1870 and in 1914, was not the maintenance of immutable obligations in a changing world. It was simply whether one of the parties to a contract could, by invoking a *rebus sic stantibus* clause or upon the still more urgent plea of necessity—which is also admitted as a valid plea—by itself alone denounce the contract, without the consent of the other parties concerned.

Such an act upon the part of a Government would correspond, in international law, with "direct action" in home affairs. For it ignores the constitutional machinery for making or modifying international law, just as the syndicalist ignores that for domestic legislation. It is true that the international machinery is

<sup>58</sup> Oppenheim, *International Law*, I, p. 550. The discussion in Phillipson and Buxton, pp. 115-119, is good.

as yet so imperfect and fragmentary as almost to invite violation of its rules. In the absence of a World Parliament there is no international framework except that supplied by the bureaucratic agencies of non-representative foreign offices. It is the tradition of diplomacy to recognize this international bureaucracy in lieu of an international state and to regard its negotiated conclusions as binding in a closer sense than domestic law. And yet there is something in the very nature of most treaties which suggests their evasion. For international agreements are so difficult to reach that until recently there were relatively few that were not inflicted upon one state by another more powerful than itself. The denunciation of such treaties by their victims when sufficiently strong to violate them with impunity is open to the same kind of objection that one may raise to syndicalist tactics in the state. It tends towards anarchy. Yet it should not be forgotten that the underlying cause of most instances of direct action in either case is the failure of the national or international organization to provide adequate representative institutions through which the just demands of a minority or a less powerful or defeated state can be met. As things stand now, the substitute for an international court which should decide when obligations change is an agreement of the co-signatories. They are the judges whether any of them may be freed from a common convention. So, at least, runs the theory of international law; and its inadequacy is obvious.

*The Catacazy despatches*

Turning from these matters of legal theory to the practical diplomatic history of the incident in ques-

tion, we run into a strange chapter of the chronicle of Russian diplomacy as preserved for us by the Imperial Archivist, Dr. Goriainow. In the archives of Petrograd dealing with this history, there are—or were—despatches from the Russian ambassador at Washington, Catacazy, which, if taken at face value, bring the United States momentarily into the incident in a way astonishing to Americans. The story, as Goriainow gives it, is to the effect that Mr. Hamilton Fish, Secretary of State under President Grant, learned incidentally of Gortchakoff's circular letter through a telegram from Vienna. The Alabama affair was on his hands at the time, and, welcoming a possible ally against England, he strongly took the side of Russia. The United States had not been a party to the Treaty of Paris, and Mr. Fish felt free to act aggressively. He gave Catacazy to understand that it was possible to contract an offensive and defensive alliance between the United States and Russia and send an American fleet into the Black Sea.<sup>59</sup>

Catacazy was advised to be prudent and not involve Russia by engagements with America, for much as the Czar's Government appreciated good friends it "did not wish to pull another Government's nuts from the fire."<sup>60</sup> This amazing interlude in the history of American seclusion from European affairs, which would have plunged the United States into the tangled intrigue of its most persistent problem, the Eastern question, has found a place in the sober pages of Goriainow; and, from there, has been summarized in the otherwise cautious work of Phillipson and Buxton, who give it full credence.<sup>61</sup> But it rests entirely

<sup>59</sup> Goriainow, p. 194.

<sup>60</sup> *Ibid.*, pp. 194, 195.

<sup>61</sup> Cf. p. 112.

upon the despatches of a man whom Mr. Fish himself charged with direct and wilful falsehoods and whose recall was asked by Washington in order that Washington should not, as Mr. Fish put it, be regarded as a home of intrigue, such as Constantinople. Whatever Mr. Fish said to Catacazy, it is inconceivable that he offered to force the issue with England by sending the American fleet through the Straits.<sup>62</sup>

*The Treaty of London, 1871*

The negotiations with other states need not be mentioned here. The result of Gortchakoff's letter was a conference at London, January, 1871. Granville began business by securing a declaration on the inviolability of treaties, which preserved the British doctrine while serving as a preamble to the action Russia was demanding:

"The plenipotentiaries of North Germany, of Austria-Hungary, of Great Britain, of Italy, of Russia and of Turkey, assembled today in conference, recognize that it is an essential principle of the law of nations that no Power can liberate itself from the engagements of the treaty, nor modify the stipulations thereof, unless with the consent of the contracting Powers by means of an amicable arrangement."<sup>63</sup>

After several failures to secure a statement acceptable to all<sup>64</sup> the Treaty of London was finally accepted, March 13, 1871. The articles relating to the Straits and the Black Sea are as follows:

<sup>62</sup> Cf. *Senate Document 5*, 42nd Congress, second session, for correspondence relative to Catacazy's dismissal.

<sup>63</sup> C. 1953, p. 57. *Accounts and Papers*, 1878, LXXXIII.

<sup>64</sup> *Accounts and Papers*, 1878, LXXXIII, summarized in Phillipson and Buxton, pp. 122-127.

"Article I. Articles XI, XIII and XIV of the Treaty of Paris of the 30th March, 1856, as well as the special convention concluded between Russia and the Sublime Porte, and annexed to the said Article XIV, are abrogated, and replaced by the following article.

"Article II. The principle of the closing of the Straits of the Dardanelles and the Bosphorus, such as it has been established by the separate convention of the 30th March, 1856, is maintained, with power to His Imperial Majesty the Sultan to open the said Straits in time of peace to vessels of war of friendly and allied Powers, in case the Sublime Porte should judge it necessary in order to secure the execution of the stipulations of the Treaty of Paris of the 30th March, 1856.

"Article III. The Black Sea remains open, as heretofore, to the mercantile marine of all nations.

"Article VIII. The high contracting parties renew and confirm all stipulations of the Treaty of the 30th March, 1856, as well as of its annexes, which are not annulled or modified by the present treaty."

An additional convention between Russia and Turkey stated:

"Article I. The special convention concluded at Paris between His Majesty the Emperor of all the Russias and His Imperial Majesty the Sultan on the 18/30th March, 1856, relative to the number and force of the vessels of war of the two high contract-

ing parties in the Black Sea, is and remains abrogated." <sup>65</sup>

The Treaty of London left the Straits closed as under the treaties of 1841 and 1856, but enlarged the Sultan's power to open them to friendly Governments if he thought it necessary in order to preserve the unrevoked articles of 1856.<sup>66</sup> On the other hand, Russia could have its fleets on the Black Sea, which was no longer neutralized. Prohibitions were removed at both the Straits and on the Black Sea.

The Treaty of London remained in force to the present war. The Congress of Berlin (1878) put the further stamp of international sanction upon it by approving it. The diplomatic history of the Straits was not without incidents in the subsequent years, but the international law remained unchanged.

<sup>65</sup> Hertslet, III, p. 1924.

<sup>66</sup> It will be recalled that from 1841 the Sultan had been prohibited allowing ships of war in time of peace.

## LIST OF PUBLICATIONS

Nos. 1-165 (April, 1907, to August, 1921). Including papers by Baron d'Estournelles de Constant, George Trumbull Ladd, Elihu Root, Barrett Wendell, Charles E. Jefferson, Seth Low, John Bassett Moore, William James, Andrew Carnegie, Pope Pius X, Heinrich Lammasch, Norman Angell, Charles W. Eliot, Sir Oliver Lodge, Lord Haldane, Alfred H. Fried, James Bryce, and others; also a series of official documents dealing with the European War, the League of Nations, the Peace Conference, and with several of the political problems resulting from the War. A list of titles and authors will be sent on application.

166. Constitution of the Permanent Mandates Commission; Terms of the "C" Mandates; Franco-British Convention of December 23, 1920; Correspondence between Great Britain and the United States respecting Economic Rights in the Mandated Territories; The San Remo Oil Agreement. September, 1921.
  167. Present Problems of the Commonwealth of British Nations: Conference of Prime Ministers and Representatives of the United Kingdom, the Dominions and India, held in June, July and August. October, 1921.
  168. Relations between Great Britain and Ireland: Proposals of British Government and Correspondence between Mr. Lloyd George and Mr. de Valera. November, 1921.
  169. Washington Conference on the Limitation of Armaments. December, 1921.
  170. Treaties of Peace between the United States on the one hand and Germany, Austria and Hungary on the other. January, 1922.
  171. Peace through Conferences: Address delivered by Mr. Lloyd George at Central Hall, Westminster, London, on January 21, 1922, and text of the resolution of the Supreme Council calling the Genoa Conference. February, 1922.
  172. Washington Conference on the Limitation of Armament. Part II. Treaties and Resolutions. March, 1922.
  173. Correspondence between Mr. Lloyd George and Sir James Craig on the Position of Ulster; Articles of Agreement establishing the Irish Free State; Irish Free State (Agreement) Bill. April, 1922.
  174. The International Chamber of Commerce, by Frederick P. Keppel, Administrative Commissioner for the United States. May, 1922.
  175. The Student and the Citizen, Phi Beta Kappa address at Columbia University, March 16, 1922, by James T. Shotwell. June, 1922.
  176. The Portorose Conference, by James T. Shotwell; An Account of the Portorose Conference, by the American Observer, Colonel C. B. Smith; Protocols and Agreements concluded at the Portorose Conference, November, 1921; Agreement concerning Passports and Visas concluded at Graz, January 27, 1922. July, 1922.
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